IN THE HIGH COURT OF JUDICATURE AT BOMBAY.
CIVIL APPELLATE JURISDICTION.

WRIT PETITION NO. 6422 OF 1995.

Smt.Usha Vithal Gavhane..... .... ..Petitioner
V/s
Mr.H.B.Padate & Ors.. ... ...Respondents.

Mr.S.G.Kudle, Adv. For the petitioner.

Respondent No.1 absent though served.

Mr.K.Y.Mandlik, Adv. For respondent Nos. 2 and 3.

Mr.R.G.Ketkar, Adv. For respondent No.4.

Mr.S.K.Chincholikar AGP for respondent No.5.

Mr.Sanjay D. Thokade, Adv. For respondent No.6.

CORAM: A.P.DESHPANDE, J.

27.2.2007.

Oral Judgment:

Shivaji Mahavidyalaya, Barsi, Solapur is administered by respondent No.3. The said College is affiliated to Shivaji University, Kolhapur. Respondent Nos. 2 and 3 had issued an advertisement inviting applications from eligible candidates for being appointed as Lecturer in Zoology. It is the case of the present petitioner that in compliance with the requirement of the statute No.195 of the Shivaji University the statutorily constituted Selection Committee

interviewed the candidates and as the petitioner was found to be suitable and eligible for being appointed, she came to be appointed in the said post of lecturer for zoology. Though the petitioner was selected for filling up full time post of lecturer in zoology, respondents 2 and 3 issued appointment order terming her appointment as temporary appointment for academic year 1990-91. The proposal seeking approval to the appointment of the petitioner was forwarded to the University and the University being convinced that the appointment was in a permanent post approved the appointment on probation for a period of 2 years. Subject to the petitioner passing net/set examination. The petitioner was continued in service till 20.4.1995 and was discontinued from service from the said date. Prior to the petitioner's termination from service a notice was served on the petitioner by respondents 2 and 3 setting out reason for termination and the same is to the effect that enough workload is not available in the subject of zoology as per the Government norms and on account of non availability of workload petitioner has been terminated from service. Aggrieved by the termination the petitioner filed an appeal before the University and College Tribunal, Pune. The main bone of contention before the Tribunal, on behalf of the rival parties was as to how workload for zoology subject is to be calculated. The Government had stipulated different norms for the purposes of conducting practicals in science subjects and the University on the other hand had stipulated different criteria for practicals. The University had prescribed a batch of about 16

students for practicals whereas the State Government had laid down that each batch shall comprise of 20 students for practicals. If the workload is to be counted as per the norms laid down by the Academic Council then more workload is available, whereas if the norms laid down by the State Government are to be adhered to, less workload is available. The dispute in regard to calculating the workload was not only restricted to the University in question but was common feature in almost all Universities in the State of Maharashtra. One such dispute landed before the Division Bench of this Court at Nagpur Bench in Writ Petition No.1518/83 and the Division Bench at Nagpur held that in academic matters the decision of the University will be binding. Thus, it is crystal clear that had the respondent calculated the workload as per the norms laid down by University, enough workload was available. Even the University and College Tribunal has recorded the finding that the termination of the petitioner on the ground that there was no enough workload available is unsustainable. Before this Court it is not in dispute that the workload has to be calculated as per the norms laid down by the University for the reason that in academic matters the decision of the University is to prevail. If that be the position, it is clear that the termination of the petitioner from service on the ground of in adequacy of workload in the subject of zoology was illegal and unsustainable in law. The next ground which is weighed with the University and College Tribunal was about the petitioner not possessing net/set qualification. The said issue has also to be

answered in favour of the petitioner for the obvious reasons that cut off date for passing net set examination is 19.9.1991. All appointments made after the said date need to be of candidates possessing net/set qualification. Admittedly the present petitioner was appointed prior to 19.9.1991 from which date the qualification of net set eligibility is made applicable. Appointments made prior to the said date are protected. However failure on the part of candidate to pass net/set examination would deprive him of future increments. Service of a candidate appointed prior to 19.9.1991 who does not possess net/set qualification cannot be terminated on the ground that he does not possess said qualification. Having regard to the position which is obtained, it cannot be disputed that the termination of the petitioner from service was illegal and improper. Similarly situated candidates all over the State, appointed prior to 19.9.1991, were protected in service. However unfortunately the petitioner was terminated. For whatever has happened, the Management cannot be blamed for the reasons that respondents 2 and 3 have acted on the basis of instructions received from the Joint Director, who was insisting that the norms in regard to workload as prescribed by the Government have to be adhered to.

2. The College and its management admit that there is vacant post of lecturer in subject of zoology on account of retirement of one Mr.S.S.Ranade on 28.2.1999. With a view to ascertain the correct position I had called upon respondent No.6-University to file affidavit indicating availability of vacant post in

the subject of zoology. An affidavit has been filed on 26.2.2007 stating that one post of lecturer is vacant on account of retirement of Mr.S.S.Ranade from February, 1999. In addition to said post, one more vacancy is likely to arise on 30.6.1007 due to retirement of one Mr.Patil. The learned counsel appearing for respondents 2 and 3 fairly states that as there is a vacancy in the post of lecturer in zoology the petitioner can be accommodated and the said Respondents have no objection if orders are passed in that regard. . However he submits that no monitory liability be fastened on respondents 2 and 3. Learned counsel further contended that though the vacancy has arisen on account of retirement of Mr.Ranade in February, 1999, for a period of 8 years the said vacancy was not permitted to be filled in and hence no grants are released for one of the post of lecturer in zoology. This position is not disputed by learned Additional Government Pleader representing the State and the Joint Director, Higher Education. As there exists vacancy in the post of lecturer in the subject of zoology and as I have already held that the termination of the petitioner on the ground of insufficient workload was itself illegal, the petitioner needs to be reinstated in service. This brings me to the consideration of other claim of the petitioner and the same pertains to back wages. It is undisputed that for a period of 2/3 years the petitioner was enrolled as an Advocate but thereafter sometime in 2005 petitioner has informed Bar Council that her name be included in the list of non practicing advocates. Assuming that the petitioner was gainfully

employed for some period, ends of justice would be met by directing consideration of the claim of the petitioner for back wages to the extent of 50%. The decision in regard to release of grants is to be taken by the Joint Director of Higher Education and in the facts and circumstances of the present case, said decision has to be taken, bearing in mind the fact that no grants are released towards payment of salary of one post of lecturer in zoology since February, 1999. Having regard to the totality of circumstances of the present case I am of the clear view that cause of justice would advance by reinstating the petitioner and by further directing Joint Director of Higher Education to consider the claim for payment of back wages to the extent of 50%. Hence I pass the following order:

ORDER

The impugned order passed by the University College Tribunal, Pune dated 7.8.1995 in Appeal No.10 of 1995 (S) is quashed and set aside. The petitioner is granted reinstatement in service with continuity. The respondent No.2 shall prepare the pay bills claiming 50% of the back wages payable to the petitioner from the date of termination till date and forward the same to the Joint Director of Higher Education, Kolhapur who in turn shall consider the petitioner's claim which is to be forwarded by the Principal for 50% back wages and take a decision in accordance with law. Respondent No.2 shall submit the pay bills within a period of three months from today. Rule made absolute in above terms.